The plaintiff produced evidence showing that he had originally bought taxi No. K4373 from one Tay Theng Kui on December 31, 1965 with the right to use the taxi permit issued in respect of that vehicle. Both the vehicle and the taxi permit were registered in the defendant's name, Lee Ah Koong. This arrangement was made because of the condition attached to the taxi permit that it was not transferable. The plaintiff also said that in effect he was the owner of the taxi having the vehicle in his possession, maintaining it and running it as his own.

Subsequently, the plaintiff replaced this taxi K4373 with another taxi bearing registration No. KA2611. This taxi was also registered in the defendant's name in order that he would have the right to use it in accordance with the taxi permit issued to the defendant. In 1968 the plaintiff again replaced this taxi KA2611, with another bearing registration No. KA6262 which he had bought from Messrs. Syn Chin Huat Hin. This vehicle was also registered in the defendant's name following the previous arrangement.

The defendant in his evidence said that he had sold the original taxi No. K4373 to Tay Theng Kui on April 26, 1965 with the right for the purchaser to use the taxi permit issued in his name. And in order to comply with the condition imposed on the permit, the taxi was to remain registered in his name. He said that because Tay Theng Kui had defaulted in paying the price of the said taxi, he had the right to take possession of the said taxi or any other vehicle which was subsequently replaced; both by reason that he had not been paid for the price of the original taxi and the fact that the taxi was still registered in his name.

Following *Sajan Singh* v. *Sardara Ali*[1] where the facts are almost similar, I am of the view that the plaintiff has shown that he was the owner of the vehicle KA6262 at the time when the proceeding in this action was instituted. He had bought the original vehicle from Tay Theng Kui and that he had no notice that Tay Theng Kui had not paid the defendant its value. He had acquired that vehicle *bona fide* from Tay Theng Kui for value and in those circumstances he could claim ownership of the vehicle against the defendant. Although the transaction was tainted with illegality, in order to overcome the condition imposed on the taxi permit, nevertheless, the transaction was fully executed and carried out and the property had been passed to him by the sale and delivery of the vehicle: see *Scarfe* v. *Morgan.*[2]

I am satisfied that the plaintiff was the owner of the vehicle and that he had the right to its immediate possession at the time of commencing the action. I therefore hold that the plaintiff is entitled to the declaration sought and the return of the taxi.

Since the defendant has sold the taxi KA6262 before the outcome of this proceeding, I order that the plaintiff is entitled to the value of the taxi at the sum of $4,300 which amount he had paid for the said taxi.

As to damages claimed in detinue, in my view the income was earned by the plaintiff during the period of detention of the said taxi, derived from his illegal activity in running the taxi contrary to the condition imposed on the permit issued in respect of the vehicle. And in my opinion his loss was not a legal loss; in law he has not lost anything which was rightfully his and he is therefore not entitled to this damage.

Costs to the plaintiff.

Claim allowed.

Solicitors: *Reddy & Co.; Chan, Jugah, Wan Ullok & Co.*

WONG KIM SWEE & ORS. v. THAM HOCK CHAM

[O.C.J. (Vohrah J.) January 17, 1981]
[Kuala Lumpur — Civil Appeal No. 22 of 1978]

Land Law — Qualified title holder — Restriction in qualified title — Land could not be leased without written approval of Collector for 10 years — Lease agreement for 6 years — Option to renew — Agreement not registered — National Land Code, ss. 206(3), 221, 222 & 225.

The plaintiffs were the registered owners of a two-storey shophouse in Kepong. In March 1971 they entered into an agreement with the defendant giving him a lease of the whole of the ground floor of the building for a period of 6 years commencing August 15, 1970. Clause 4(c) of the agreement provided for the defendant to have the first option to renew the lease for a period of 6 years at a reasonable rent to be mutually agreed upon. The agreement was not registered as required under section 222 of the National Land Code.

The plaintiffs' qualified title which was originally issued and registered on May 23, 1970 stipulated that the land on which the building stood could not be transferred, leased, tenanted, charged or otherwise disposed of without the written approval for the Collector of Land Revenue for a period of 10 years from the date of registration of the title so that this restriction on the face of the document continued up to and including May 22, 1980.

On June 7, 1976 the plaintiffs gave notice that they did not wish to renew or extend the lease and indicated that they would take vacant possession of the building on August 15, 1976. The defendant, however, on July 16, 1976 intimated his intention to exercise his option under Clause 4(c) to renew the lease for another six years. The learned President of the Sessions Court dismissed with costs the plaintiffs' claim for vacant possession of the shophouse and for special damages for its unlawful occupation. On appeal,

Held, allowing the appeal: (1) from the qualified title, the restriction which appeared on its face applied not to the approved application as such but to the title itself so that the provisions of section 225 of the National Land Code operated in this case. In this case the agreement was not in the prescribed form as required by section 221. On these facts alone the agreement could not have been registered and consequently was not enforceable under the National Land Code as not having vested an interest in the defendant. It was in fact void for being in breach of the Code;

(2) the defendant could not rely upon the provision contained in the void agreement as conferring upon him the right to exercise an option;

(3) the defendant could not also rely on the protection afforded by section 206(3) of the National Land Code since this subsection afforded protection only in relation to the term of a current agreement and does not extend to protect a right to enter into a future agreement.

Cases referred to:-

(1) *Ho Ying Chye* v. *Teh Cheong Huat* [1965] 2 M.L.J. 261.

(2) *Lee Lum Soh* v. *Low Ngah* [1973] 1 M.L.J. 97.

CIVIL APPEAL.

M. Shanker for the plaintiffs.

William Chen for the defendant.

Cur. Adv. Vult.

Vohrah J.: This is an appeal from the decision of the learned President of the Sessions Court, Kuala Lumpur, dismissing with costs the plaintiffs' claim for vacant possession of a shop-house and for special damages for its unlawful occupation.

For the purposes of the appeal the following facts are relevant. The plaintiffs are the registered owners of the shop-house which is a two-storeyed building situated at No. 3445, Jinjang North, Kepong, Selangor. On March 4, 1971 they entered into an agreement with the defendant giving him a lease of the whole of the ground floor of the building for a period of 6 years commencing from August 15, 1970. Clause 4(c) of the agreement provided for the defendant to have the first option to renew the lease for a period of 6 years at a reasonable rent to be mutually agreed upon. The plaintiffs' qualified title (See AR48) which was originally issued and registered on May 23, 1970 clearly stipulated that the land upon which the building stood could not be transferred, leased, tenanted, charged or otherwise disposed of without the written approval of the Collector of Land Revenue for a period of 10 years from the date of registration of the title so that this restriction on the face of the document continued up to and including May 22, 1980. The agreement was not registered as required under section 222 of the National Land Code. On June 7, 1976 the plaintiffs gave notice that they did not wish to renew or extend the lease and indicated that they would take vacant possession of the building on August 15, 1976 (See AR56). The defendant, however, on July 16, 1976 replied intimating his intention to exercise his option under Clause 4(c) to renew the lease for another six years leaving the question of the rental at large (See AR61). On July 28, 1976 the plaintiffs again reiterated their intention not to renew the lease and gave notice of the institution of legal proceedings if vacant possession was not delivered by August 15, 1976 (See AR62).

It is very clear from the qualified title, despite the expert opinion of the Assistant Collector of Land Revenue (DW1), that the restriction which appears on its face applied not to the approved application as such but to the title itself so that the provisions of section 225 operated in this case. It is also very clear that the agreement for the lease is not in the prescribed form as required under section 221. On these facts alone it is obvious that the agreement could not have been registered and consequently is not enforceable under the National Land Code as not having vested an interest in the defendant (See *Ho Ying Chye* v. *Teh Cheong Huat*[1] and *Lee Lum Soh* v. *Low Ngah*[2]). It is in fact void for being in breach of the Code. That being the case, in my view, the defendant cannot rely upon a provision contained in the void agreement as conferring upon him the right to exercise an option. However, counsel for the defendant contended that the provisions of section 206(3) operate in this case to convert the void lease into a valid agreement to grant a lease enforceable in equity. But the plaintiffs did not purport to terminate the lease during its currency but merely drew the attention of the defendant to the fact that the tenancy would expire by effluxion of time. Therefore the defendant cannot rely on any protection being afforded by section 206(3) since, in my view, this subsection affords protection only in relation to the term of a current agreement and does not extend to protect a right to enter into a future agreement. In the result the appeal is allowed with costs here and below. As the plaintiffs in their statement of claim have limited their claim for damages to $3,000, I award them this sum with interest as prayed.

Appeal allowed.

Solicitors: *Shearn, Delamore & Co.; William Chen & Co.*

E.I. LTD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Vohrah J.) January 17, 1981]
[Kuala Lumpur — Tax Appeal No. 1 of 1978]

Revenue Law — Income Tax — Double Taxation Relief — Management fees paid to company resident in the U.K. with no permanent establishment in Malaysia — Royalties — Assessments — Income Tax Act, 1967, ss 2, 4(d), 15(b) & 132(1) — Double Taxation Relief (U.K.), Order 1973, arts. VI, XI & XXVI(1)(a).

EIL was incorporated in the United Kingdom and was resident there. It entered into an agreement with *PA* to set up *EISB* in Malaysia for purposes of manufacturing catheters. The said agreement provided for *EIL* to appoint 3 directors to the board of *EISB* and for these directors and for other *EIL* employees to provide managerial, planning, training, technical, operational, marketing and development services to *EISB*. In the result, *EISB* paid to *EIL* certain amounts as managerial fees. The Inland Revenue treated these payments as royalties within the definition of section 2 of the Acts and accordingly made assessment on *EIL* under section 4(d). EIL challenged these assessments but the Special Commissioners decided that the payments were royalties under section 2 and that they were correctly charged to income under section 4(d). On appeal,

Held, allowing the appeal: (1) since the definition of "royalties" in article XI of the Relief Order did not apply it was clear by virtue of paragraph 1 of article VI that any income of *EIL* was taxable only in the United Kingdom since it did not carry on business in Malaysia through a permanent establishment situated therein;

(2) it was not appropriate in this case to call in aid the provisions of section 15(b) of the Income Tax Act, without which the Inland Revenue would not have been able to charge tax on this income of *EIL* under the provisions of section 4;

(3) the decision of the Special Commissioners confirming the assessment made by the assessment made the Inland Revenue was therefore wrong in law.

CASE STATED.

James Puthucheary for the appellants.

Mokhtar Sidin (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Vohrah J.: This is an appeal by way of case stated from a decision of the Special Commissioners of Income Tax confirming assessments to income tax made under section 4(d) of the Income Tax Act, 1967 by the respondent (DGIR) upon the appellant company (EIL) in respect of certain payments received